

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HORACE HILL, JR.,

Plaintiff,

v.

KENNETH NESS et al.,

Defendants.

CASE NO. 3:23-cv-05940-LK

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge S. Kate Vaughan. Dkt. No. 10. Judge Vaughan recommends dismissing Plaintiff Horace Hill, Jr.’s complaint without prejudice, pursuant to 28 U.S.C. § 1915A(b)(1), for failure to state a claim upon which relief may be granted. *Id.* at 3.

Before issuing the R&R, Judge Vaughan issued an Order to Show Cause requiring Mr. Hill to show cause why his complaint should not be dismissed for failure to state a claim. Dkt. No. 8. Judge Vaughan identified the following defects in Mr. Hill’s complaint:

- Six of the eight named Defendants cannot be sued under Mr. Hill’s 42 U.S.C. § 1983 claim. *Id.* at 3–4.

- 1 • Three Defendants—Josephine Townsend, Louis Byrd, Jr., and Phil Ard—are not
2 proper defendants in this action because they are private attorneys or public defenders
3 who cannot be sued as state actors under Section 1983. *Id.* at 3 (citing *Polk Cnty. v.*
4 *Dodson*, 454 U.S. 312 (1981)).
- 5 • Three others—Judge David Gregerson, Deputy Prosecutor Ana Joy, and Chief Deputy
6 Prosecutor Anna Klein—are entitled to absolute immunity from the actions Mr. Hill
7 alleges in his complaint. *Id.* at 3–4 (citing *Briscoe v. LaHue*, 460 U.S. 325, 334–36
8 (1983), and *Imbler v. Pachtman*, 424 U.S. 409 (1976)).
- 9 • *Younger* abstention applies to Mr. Hill’s claims because (1) his requested relief seeks
10 to enjoin his ongoing state court criminal proceedings; (2) those proceedings implicate
11 important state interests; and (3) he failed to show that there is not an adequate
12 opportunity in the state proceedings to raise his challenges. *Id.* at 4–5 (citing *Younger*
13 *v. Harris*, 401 U.S. 37 (1971)).

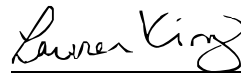
14 Mr. Hill filed a document in response to the Order to Show Cause which failed to address
15 any of the issues identified in the Order to Show Cause. Dkt. No. 9; Dkt. No. 10 at 3. Judge
16 Vaughan therefore recommends dismissing Mr. Hill’s complaint without prejudice for the reasons
17 stated in her Order to Show Cause. Dkt. No. 10 at 3.

18 Mr. Hill has not filed any objections to the R&R. The Court reviews findings and
19 recommendations “*if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328
20 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the statute requires a
21 district judge to review, de novo, findings and recommendations that the parties themselves accept
22 as correct.”); *see also* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

23 Therefore, in the absence of any objections by Mr. Hill, the Court hereby finds and
24 ORDERS as follows:

1. The Court ADOPTS the Report and Recommendation, Dkt. No. 10.
2. Mr. Hill's action is DISMISSED without prejudice.
3. The Clerk is directed to send copies of this Order to Mr. Hill at his last known address and to Judge Vaughan.

Dated this 1st day of March, 2024.



Lauren King
United States District Judge